

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID H. KNIGHT,)	CIVIL ACTION
Plaintiff)	
)	NO. 03-410 ERIE
v.)	
)	
BUILDING MATERIALS CORPORATION)	
OF AMERICA d/b/a GAF MATERIALS)	
CORPORATION and/or BUILDING)	
MATERIALS MANUFACTURING)	
CORPORATION and JOE RINDERLE,)	
Defendants)	ELECTRONICALLY FILED

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants BUILDING MATERIALS CORPORATION OF AMERICA d/b/a GAF MATERIALS CORPORATION and/or BUILDING MATERIALS MANUFACTURING CORPORATION and JOE RINDERLE, by their attorneys, MacDonald, Illig, Jones & Britton LLP, file this Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and L.R. 56.1 of the Local Civil Rules of the United States District Court for the Western District of Pennsylvania, and state the following in support thereof:

1. This civil action involves the following claims by plaintiff David H. Knight (hereinafter "Knight") against defendants Building Materials Corporation of America d/b/a GAF Materials Corporation and/or Building Materials Manufacturing Corporation (hereinafter "GAF

Materials") and Joe Rinderle (hereinafter "Rinderle"), all based upon alleged racial discriminatory practices and an alleged hostile work environment:

- (1) Count I (Civil Rights), alleging impairment of the right to make and enforce contracts in violation of 42 U.S.C. § 1981 (hereinafter "§ 1981");
- (2) Count II (Employment Discrimination), alleging race discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (hereinafter "Title VII"); and,
- (3) Count III (Employment Discrimination), alleging race discrimination in violation of the Pennsylvania Human Relations Act, 43 P.S. § 951, *et seq.* (hereinafter "PHRA").

(Second Amended Complaint, ¶¶ 1-30).

2. Defendants GAF Materials and Rinderle seek summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure with respect to all claims by plaintiff Knight under § 1981, Title VII and the PHRA and support this Motion for Summary Judgment with the following, all of which are incorporated herein by reference:

- (1) Appendix to Defendants' Motion for Summary Judgment;
- (2) Brief in Support of Defendants' Motion for Summary Judgment; and,
- (3) Proposed Order.

3. There are no genuine issues as to any material fact, and defendants GAF Materials and Rinderle are entitled to judgment as a matter of law with respect to all claims by plaintiff Knight under § 1981, Title VII and the PHRA, set forth in the Second Amended Complaint, for the following reasons:

- (1) Knight has failed to establish under § 1981, Title VII and the PHRA that the defendants' legitimate, non-discriminatory reasons for requesting the discontinuance of Knight's assignment to the GAF Materials facility were pretextual;
- (2) Knight has failed to establish under § 1981, Title VII and the PHRA that the alleged conduct of the defendants was so pervasive and severe so as to sustain a hostile work environment claim;
- (3) Knight has failed to establish that he timely filed his lawsuit within 90 days of receipt of the EEOC Dismissal and Notice of Rights; and,
- (4) Knight failed to exhaust his administrative remedies against Rinderle, and there is no individual liability under Title VII.

WHEREFORE, defendants Building Materials Corporation of America d/b/a GAF Materials Corporation and/or Building Materials Manufacturing Corporation and Joe Rinderle request this Honorable Court to enter summary judgment in their favor and against plaintiff David H. Knight with respect to all claims set forth in the Second Amended Complaint.

Respectfully submitted,

s/ Lisa Smith Presta

Lisa Smith Presta

PA ID No. 65527

Walter E. "Stormy" Deacon III

PA ID No. 82961

MacDONALD, ILLIG, JONES & BRITTON LLP

100 State Street, Suite 700

Erie, Pennsylvania 16507-1459

(814) 870-7600

Fax: (814)-454-4647

lpresta@mijb.com

wdeacon@mijb.com

Attorneys for Defendants

Building Materials Corporation of America

d/b/a GAF Materials Corporation and/or

Building Materials Manufacturing Corporation

and Joe Rinderle

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendants' Motion for Summary Judgment was served upon the following counsel for plaintiff David H. Knight, via First-Class United States Mail, this 25th day of July 2005:

Timothy McNair, Esq.
821 State Street
Erie, PA 16501-1316

/s/ Lisa Smith Presta

Lisa Smith Presta